

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

PROBUILDERS SPECIALTY INSURANCE
COMPANY, RRG, a District of Columbia
corporation.

No.

COMPLAINT FOR DECLARATORY
JUDGMENT AND EQUITABLE
CONTRIBUTION

TALBITZER CONSTRUCTION, LLC, a Washington limited liability company; DANIEL SARANTO and JANE DOE SARANTO and the marital community composed thereof; BURLINGTON INSURANCE COMPANY, a North Carolina corporation

Defendants.

I. Parties

1.1 ProBuilders Specialty Insurance Company, RRG. ProBuilders Specialty Insurance Company, RRG (“ProBuilders”) is a District of Columbia risk retention group with its principal place of business in Georgia. ProBuilders issued a commercial general liability policy to Talbitzer Construction LLC

1.2. Talbitzer Construction LLC. Talbitzer Construction LLC (“Talbitzer”) is a

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1 Washington limited liability company with its principal place of business in Clark County,
2 Washington. Talbitzer is a defendant in *Daniel Saranto v. Columbia River Homes, Inc. et al.*,
3 Clark County Superior Court cause no. 07-2-02429-1.

4 **1.3 Daniel Saranto and Jane Doe Saranto.** Daniel Saranto and Jane Doe Saranto are
5 residents of Clark County, Washington. On information and belief, Daniel Saranto and Jane Doe
6 Saranto are husband and wife. Daniel Saranto is a plaintiff in *Daniel Saranto v. Columbia River*
7 *Homes, Inc. et al.*, Clark County Superior Court cause no. 07-2-02429-1.

8 **1.4 The Burlington Insurance Company.** The Burlington Insurance Company
9 (“Burlington”) is a North Carolina corporation with its principal place of business in
10 Connecticut. Burlington issued a commercial general liability policy to Columbia River Homes,
11 Inc.

12 **II. Jurisdiction and Venue**

13 **2.1 Amount in Controversy.** The amount in controversy exceeds, exclusive of
14 interest and costs, the sum specified in 28 U.S.C. § 1332.

15 **2.2 Jurisdiction.** This court has jurisdiction under 28 U.S.C. § 1332 (Diversity) and
16 28 U.S.C. § 2201 (Declaratory Judgments).

17 **2.3 Venue.** Venue is proper in this court under 28 U.S.C. § 1391 because all or a
18 substantial part of the events or omissions giving rise to the claim occurred in this judicial
19 district.

20 **III. Facts**

21 **3.1 The ProBuilders Policy.** ProBuilders issued a commercial general liability
22 insurance policy to Talbitzer under policy no. LAM 5012914 with a policy period of December

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1 31, 2006, to January 1, 2008 ("Policy"). The Policy provides liability coverage for property
 2 damage and bodily injury claims to persons qualifying as an insured under the Policy in
 3 accordance with its terms. A copy of the policy is attached as exhibit 1.

4 **3.2 The Burlington policy.** Burlington issued a commercial general liability
 5 insurance policy to Columbia River Homes, Inc. ("Columbia") under policy no. HGL0014086
 6 with a policy period of October 6, 2006, to October 6, 2007. The Burlington policy contains an
 7 endorsement providing in part that the definition of insured under the Burlington policy is
 8 amended to include "[a]ny person or organization with whom you have agreed, in written
 9 contract, that such person or organization should be added as an additional insured on your
 10 policy, provided such written contract is fully executed prior to an 'occurrence in which
 11 coverage is sought under this policy."

12 **3.3 Subcontract agreement between Talbitzer and Columbia.** On or around
 13 February 10, 2005, Talbitzer and Columbia entered into a subcontract agreement. The
 14 subcontract agreement provides in part that Columbia must maintain commercial general liability
 15 insurance and that this insurance must identify Talbitzer as an additional insured. On information
 16 and belief, the subcontract agreement was in effect on March 21, 2007, and applied to work
 17 Columbia performed for Talbitzer in the Lacamas Meadows housing development.

18 **3.4 Suit.** Daniel Saranto has sued Columbia Rivers Homes, Inc., Randy Sams,
 19 Talbitzer, and Talbitzer Homes Realty LLC ("Talbitzer Homes") in the Clark County Superior
 20 Court under cause no. 07-2-02429-1 ("Saranto suit"). In that suit, Daniel Saranto alleges that on
 21 March 21, 2007, he was an employee of a subcontractor working on a construction site in Clark
 22 County. On information and belief, that construction site was in a housing development named
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1 Lacamas Meadows. In his amended complaint, Saranto alleges that Talbitzer Construction and/or
 2 Talbitzer Homes was the general contractor for the project and that Columbia River Homes had
 3 been contracted by Talbitzer and/or Talbitzer Homes to roof a house in the development. He also
 4 alleges that Randy Sams, an employee of Columbia River Homes, dropped shingles from the
 5 roof and that those shingles struck Saranto, causing serious injuries. Saranto further alleges that
 6 Talbitzer and/or Talbitzer Homes had supervisory authority over the worksite, that Talbitzer
 7 and/or Talbitzer Homes breached the duty of care, and that this breach proximately caused injury
 8 to Saranto. Saranto's claims are more fully set forth in his Amended Complaint for Personal
 9 Injuries, which is attached as exhibit 2.

11 **3.5 Talbitzer's tender to ProBuilders.** On or around March 12, 2010, Talbitzer
 12 tendered its defense in the *Saranto* suit to ProBuilders under the Policy.

14 **3.6 ProBuilders' position.** ProBuilders has agreed to defend Talbitzer and is
 15 defending Talbitzer in the *Saranto* suit under a full reservation of rights. ProBuilders contends,
 16 however, that the Policy does not apply to the claims asserted against Talbitzer in the *Saranto*
 17 suit.

18 **3.7 Talbitzer's tender to Burlington.** On or around March 15, 2010, Talbitzer
 19 tendered its defense in the *Saranto* suit to Burlington as an additional insured.

21 **3.8 Burlington's position.** On or around March 25, 2010, Burlington notified
 22 Talbitzer that it had no duty to defend or indemnify Talbitzer in the *Saranto* suit. In denying the
 23 tender, Burlington maintained, among other things, that it had no duty to defend because the
 24 amended complaint in the *Saranto* suit alleges that Saranto's injuries were contributed in part if
 25 not in whole by Talbitzer's negligence.

IV. Claim for Relief

4.1 Controversy. An actual justiciable controversy exists over the rights of the parties under the Policy.

4.2 Declaratory Relief. ProBuilders is entitled to declaratory judgment as against all defendants that under the Policy ProBuilders has no duty to defend Talbitzer and no duty to pay any judgment that may be entered against Talbitzer in the *Saranto* suit.

4.3 Basis for Declaratory Relief. ProBuilders has no duty to defend Talbitzer in the *Saranto* suit and no duty to pay any claim on its behalf because, among other things: under the Policy, ProBuilders has no duty to defend Talbitzer if another insurer is obligated to defend the insured, and Burlington is obligated to defend Talbitzer in the *Saranto* suit; under the Policy, ProBuilders has no duty to defend or indemnify Talbitzer until the self-insured retention of \$35,000 has been exhausted by payment of settlements, judgments, or claims expenses, and that amount has not been exhausted; and the Policy provides coverage only for designated premises or projects, and Lacamas Meadows, where Saranto was allegedly injured, was not a designated premises or project. Other provisions of the Policy may apply to exclude or limit coverage. ProBuilders reserves the right to amend its complaint to assert the application of those provisions.

4.4 Equitable Contribution. ProBuilders is entitled to equitable contribution from Burlington. Burlington has a duty to defend Talbitzer in the *Saranto* suit, and it has breached that duty. Burlington's breach of that duty has caused ProBuilders to bear a disproportionate amount of the cost of defending Talbitzer in the *Saranto* suit. ProBuilders is entitled to equitable contribution from Burlington for the amounts ProBuilders has incurred and may incur in the

1 future in defending Talbitzer in the *Saranto* suit.

2 **V. Request for Relief**

3 ProBuilders requests that the court:

4 **5.1** Determine the rights of the parties under the Policy by way of declaratory
5 judgment that no coverage exists for the claims in the *Saranto* suit, and that ProBuilders has no
6 duty to defend Talbitzer in the *Saranto* suit and no duty to pay any amounts that may be awarded
7 against Talbitzer in the *Saranto* suit;

8 **5.2** Enter judgment in favor of ProBuilders and against Burlington on ProBuilder's
9 claim for equitable contribution;

10 **5.3** Award ProBuilders its reasonable costs and attorneys fees to the extent permitted
11 by law; and

12 **5.4** Grant such further relief as is just and appropriate.

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14 DATED this 9th day of March, 2011.

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